

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

AYINDA HARPER

Case No. 1:21-CR-000236

(Judge Wilson)

MOTION TO DISMISS

AND NOW, this 17th day of November 2022, comes the above-named Defendant, Ayinda Harper, by and through his attorney, Jonathan R. White, Esquire and DETHLEFS-PYKOSH LAW GROUP, LLC, respectfully requests This Honorable Court to grant a motion to dismiss and, in support thereof, avers the following:

1. On August 18, 2021, Defendant was indicted for the offense of Possession of Firearm Prohibited (Count 1) under 18 U.S.C. §922(g)(1) at the above-captioned docket number.
2. On August 18, 2021, Defendant entered a Not Guilty Plea.
3. Undersigned counsel was appointed on August 18, 2021.
4. Defendant filed a Motion to Suppress on September 1, 2022 (Document Number 40).
5. On November 3, 2022, a hearing was held on the above referenced Motion to Suppress and at the time the Court granted leave to file the within motion to dismiss in light of new case law.
6. Briefs supporting the referenced Motion to Suppress and the within motion are due November 17, 2022.

7. The present motion is made pursuant to a recent change in the law. On June 23, 2022, the Supreme Court issued its opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

8. *Bruen* created a change in the analysis of firearm regulations and firearm statutes under the Second Amendment.

9. In light of *Bruen*, a new test was created when analyzing Second Amendment challenges to firearms; specifically, Courts must now consider only the “constitutional text and history.” *Bruen*, 142 S. Ct. at 2128-29.

10. The Supreme Court has clarified that regulations governing conduct falling within the Second Amendment’s text are “presumptively” unconstitutional unless the Government can “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2129-30.

11. In light of this new change in law and the analysis of the within matter, the Court must dismiss the indictment against Mr. Harper.

12. Assistant United States Attorney John Baer does not concur with this motion.

WHEREFORE, it is respectfully requested This Honorable Court declare §922(g)(1) unconstitutional and dismiss the indictment against him.

Respectfully submitted,
DETHLEFS-PYKOSH LAW GROUP, LLC

Dated: November 17, 2022

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